

Tuesday - October 22, 1996 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney William F. Slawter; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Worley gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

Resolutions & Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 8, 1996, AND THE WORKSESSION HELD ON OCTOBER 15, 1996

B. RESOLUTION NO. 96-182 - RESOLUTION AWARDING BIDS FOR TWO FIRE PUMPERS

Summary: The consideration of the award of Bid Request No. 459-97 to purchase two fire pumpers for use in the Fire Department.

Pursuant to N. C. Gen. Stat. sec. 143-129, and in compliance with the City's Minority Business Plan, sealed bids were received to furnish one (1) fire rescue pumper and one (1) pumper retrofitted with a telesquirt for the Fire Department. Two bids were received as follows:

Vendor Net Cost

Bid Item No. I:

Chief's Fire & Rescue Inc., Jefferson, NC \$146,950.00

KME Fire Apparatus, Nesquehoning, Pennsylvania \$180,381.08

Bid Item No. II:

KME Fire Apparatus, Nesquehoning, Pennsylvania \$222,281.00

These units will be an addition to the City's fleet. Bids have been reviewed for technical compliance to specifications by the Fire Department and Fleet Management, and their concurrence received in the following recommendation.

Subject to Council's approval, it is recommended that the bid be awarded as follows:

Bid Item No. I:

Award to the second low bidder, KME Fire Apparatus, in the amount of \$180,381.08 for the purchase of a 1996 Freightliner model FL-80 with a KME Rear Mount Rescue Pumper.

The low bid from Chief's Fire & Rescue, Inc., is not recommended because the unit they proposed to furnish fails to meet minimum bid requirements/specifications. Major exceptions include a lighter weight

-2-

cab and chassis than specified and failure to provide passenger compartments large enough to transport assigned firefighters.

Bid Item No. II:

Award to the sole bidder, KME Fire Apparatus, in the amount of \$222,281.00 for the purchase of a 1996 KME model MFD with a 174 Aerial retrofitted with a Telesquirt from vehicle no. 922.

In addition to evaluating bids for compliance to specifications, etc., cost was also considered. When compared to other governmental agencies cost for like equipment, the amounts bid the City are determined to be fair and reasonable.

Funds for the purchase of this equipment are to be from the Fire Department's appropriations, Account Code 20-420-40-471-00-5741. (Item no. (I) is budgeted to be acquired by lease/purchase arrangements, funds for item no. (II) to be provided in FY 96/97 budget, as amended.)

RESOLUTION BOOK NO. 23 - PAGE 316

C. RESOLUTION NO. 96-183 - RESOLUTION OF INTENT TO SET A PUBLIC HEARING ON NOVEMBER 26, 1996, TO CLOSE EVELAKE DRIVE WHERE IT DEAD ENDS AND INTERSECTS WITH THE CITY OF ASHEVILLE TERRITORIAL LINE, ADJACENT TO HAZEL TOWNSHIP

RESOLUTION BOOK NO. 23 - PAGE 318

D. RESOLUTION NO. 96-184 - RESOLUTION SETTING A PUBLIC HEARING ON NOVEMBER 12, 1996, TO CONSIDER THE ANNEXATION OF SECTION VIII OF BRAESIDE (BURNSIDE PHASE 1 AT BILTMORE PARK)

RESOLUTION BOOK NO. 23 - PAGE 319

E. RESOLUTION NO. 96-185 - RESOLUTION AUTHORIZING THE FILING OF A GRANT APPLICATION WITH THE N.C. DEPT. OF ENVIRONMENT, HEALTH & NATURAL RESOURCES TO FUND THE AFTER SCHOOL FOOD SERVICE PROGRAM

Summary: Funds are available through the North Carolina Department of Environment, Health and Natural Resources, Division of Maternal and Child Health, Child and Adult Care Food Program to provide breakfast, lunch, and snacks. The City of Asheville wishes to apply for funding to provide food service in the After School Program.

The Parks and Recreation After School Program provides supervised licensed child care, recreation, enrichment activities, and food service to children ages 5 to 12 during after school hours and holidays at seven program sites. Sites are located at Claxton, Dickson, Hall Fletcher, Jones, Randolph, and Vance Elementary Schools; and Reid Recreation Center. Sites are licensed by the State of North Carolina with a child/staff ratio of no less than one staff person for 15 children. Breakfast is provided as needed, and after school snacks provided daily. Lunch is provided on holidays and teacher work days. Activities include arts and crafts, games, sports, science, music, free choice time, and computer lab. Fees are based on the number of children from each family and frequency of attendance. Parks and Recreation will contract with Asheville City Schools for food service at a rate of \$.75 per breakfast, \$1.25

per lunch, and \$.60 per snack. The grant will reimburse Parks and Recreation approximately one third of the cost of providing food service in the After School Program. The number of meals will vary based on the total meals actually served each month.

-3-

The Parks and Recreation Department recommends the City of Asheville apply for the grant funds through the Child and Adult Care Food Program.

RESOLUTION BOOK NO. 23 - PAGE 321

F. RESOLUTION NO. 96-186- RESOLUTION APPOINTING MEMBERS TO THE CITY BUSINESS AND DEVELOPMENT COMMITTEE

Summary: Ord. 2309 established the City Business and Development Commission. Said ordinance authorizes various agencies to appoint members to the Commission and those agencies have now identified their appointments.

The following members are hereby appointed to an initial one -year term: Dan Ray (Advantage West), Jay Garner (Chamber of Commerce), John Fleming (Asheville Downtown Association), Scott Jarvis (Asheville Downtown Commission), and Bob Roberts (Asheville Merchants Association).

The following members are appointed to an initial two-year term: Barbara Field (City Council), Bruce Tompkins (Biltmore Village Merchants Association), Winston Pulliam (Buncombe County), Richard Nantelle (Coalition of Asheville Neighborhoods), and Albert Sneed (Council for Independent Business Owners).

The following members are appointed to a three-year term: Tommy Sellers (City Council), James Geter (Eagle/Market Streets Development Corporation), Rebecca Anderson (HandMade in America), Ed Metz (RiverLink), and Stom Peterson (West Asheville Business Association).

Mr. H.K. Edgerton, President of the NAACP, reminded City Council that the NAACP would like to have representation on this Commission. Vice-Mayor Field responded that when the City Council Boards & Commissions Committee meets, they will discuss that request.

RESOLUTION BOOK NO. 23 - PAGE 322

G. RESOLUTION NO. 96-187 - RESOLUTION AUTHORIZING ENMARK CORPORATION TO DISPENSE GASOLINE AT UNATTENDED SERVICE STATIONS

Summary: The consideration of a request from the Enmark Corporation asking the City's permission to dispense gasoline and diesel fuel from its two Asheville service stations when those stations are unattended.

A number of service stations around the U.S. provide for customer access to gasoline and diesel fuel when the station is unattended. This access is most often via special credit card.

It is possible for such facilities to be safely operated if safety concerns are satisfied.

The Enmark Corporation has asked for permission to operate two such service stations in Asheville. Enmark officials have met with the Fire Chief and staff of the Fire Department's Life Safety Division to identify how an unattended service station could be operated in the safest possible manner. The conditions identified include:

- telephone within 75 feet (handicapped-accessible)
- emergency fuel shutoff within 75 feet (handicapped-accessible)
- signs with clear emergency-action instructions

-4-

- limit on the amount of fuel that can be dispensed from any automated pump
- on-site availability of sufficient flammable-liquid absorbent material to handle a fuel spill at the fuel-dispensing limit
- U.S. Department of Transportation-approved container for holding absorbent material after any spill
- time limit for removal of contaminated absorbent by certified waste disposal firm after a spill

Enmark Corporation has agreed to these conditions. The Asheville Fire Code requires City Council approval, which is recommended by the Fire Chief.

Based on Enmark Corporation's agreement to the conditions described above, the Fire Chief of the City of Asheville recommends City Council adoption of a resolution authorizing the Enmark Corporation to operate two service stations capable of unattended fuel dispensing after regular service station hours.

#### **RESOLUTION BOOK NO. 23 - PAGE 324**

#### **H. RESOLUTION NO. 96-188 - RESOLUTION AUTHORIZING EXECUTION OF A CONTRACT AND RELATED DOCUMENTS FOR THE INSTALLMENT PURCHASE OF A FIRE TRUCK**

Summary: The consideration of the authorization for execution of documents in connection with the installment purchase of a fire truck.

The City of Asheville Capital Improvements Plan ("CIP") includes an appropriation in Fiscal Year 1996-97 for the installment purchase of a pumper fire truck. The CIP anticipated financing the purchase at 5.50% interest for 10 years.

City Council will have earlier in their October 22, 1996, meeting, approved the purchase of a 1996 Freightliner model FL-80 with a KME Rear Mount Rescue Pumper at a bid price of \$180,381.08.

To obtain the best cost of funds for financing the fire truck, the Finance Department used a Request for Proposal process to solicit proposals from 20 banks and other financing companies. The lowest cost response was submitted by United Financial of North Carolina, Inc. Their proposal includes a 5.24% interest rate for the duration of the financing and includes no closing costs or origination fees.

This resolution will authorize the Mayor, City Manager and City Clerk and/or Finance Director to execute any and all documents for funding the purchase of the fire truck at a principal purchase amount not to exceed \$180,381.08.

The Finance Department recommends approval of the resolution.

#### **RESOLUTION BOOK NO. 23 - PAGE 325**

#### **I. MOTION AUTHORIZING THE PUBLIC WORKS DEPARTMENT TO SOLICIT QUOTES TO DEVELOP METHODS TO MORE RELIABLY HANG AND MAINTAIN HOLIDAY LIGHTING AND TO MAINTAIN HOLIDAY LIGHTING IN SUBSEQUENT YEARS**

-5-

**J. MOTION AUTHORIZING THE PLANNING & DEVELOPMENT DEPARTMENT TO PREPARE AND SOLICIT REQUESTS FOR PROPOSALS FOR A PARKING STUDY FOR ALL OF DOWNTOWN ASHEVILLE, AND TO ADD BILTMORE**

**VILLAGE AND HAYWOOD ROAD AS ADD ALTERNATES TO THE REQUEST FOR PROPOSALS**

**K. MOTION AUTHORIZING THE CITY BUSINESS AND DEVELOPMENT DIVISION TO DEVELOP A STRATEGIC PLAN FOR ECONOMIC DEVELOPMENT FOR THE CITY**

**L. MOTION TO PERMIT CURBSIDE MANAGEMENT INC. TO ASSIGN ANY RIGHTS IT MAY HAVE TO FUNDS THAT MAY BECOME DUE UNDER THAT CONTRACT BETWEEN CURBSIDE MANAGEMENT INC. AND THE CITY OF ASHEVILLE FOR CURBSIDE RECYCLING SERVICES DATED THE 1ST DAY OF OCTOBER, 1996, TOGETHER WITH ALL PRESENT AND FUTURE INDEBTEDNESS, ACCOUNTS RECEIVABLES, ALL PROCEEDS OF SAID ACCOUNTS RECEIVABLES, AND ALL ACCESSIONS, ADDITIONS, REPLACEMENTS AND SUBSTITUTIONS RELATING TO ANY OF THE FOREGOING**

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions on the Resolutions & Motions Consent Agenda and they will not be read.

Councilman Worley moved for the adoption of the Resolutions & Motions Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

**Ordinances:**

**A. ORDINANCE NO. 2323 - ORDINANCE AMENDING ARTICLE II, DIVISION I, SECTIONS 22, 23, 24, 26 AND 28 OF APPENDIX C OF THE CODE OF ORDINANCES RELATIVE TO SPEED LIMITS**

Summary: Change to 15 mph on Reservoir Road; Change to 20 mph Baker Drive Extension (entirety), Wood Avenue (entirety), Bradley Road (entirety), Edgewood Road (South) (entirety), Westwood Road (entirety), Stoner Road (entirety), Trappers Run (entirety), Granada Street (entirety), Cordova Street (entirety), Stewart Street (entirety), Short Michigan Avenue (entirety); Change to 25 mph Baker Drive (entirety), Sleepy Hollow Drive (entirety), Edgewood Road (Enka) (entirety), Oakley Road (entirety), Vermont Road (entirety), Michigan Avenue (entirety), Mitchell Avenue (entirety); Change to 35 mph Fairview Road - from Sweeten Creek Road to NC 81) and Brevard Road (from I-240 to Haywood Road [US 19-23 Business]); and Establish at 45 mph Brevard Road - from Sardis Road to I-240.

**ORDINANCE BOOK NO. 16 - PAGE 103**

**B. ORDINANCE NO. 2324 - BUDGET AMENDMENT FOR THE PURCHASE AND INSTALLATION OF ADDITIONAL SHELTERS AND BENCHES FOR THE TRANSIT SYSTEM**

Summary: The City of Asheville received another capital grant for the purchase and installation of additional shelters and benches for the transit system.

The City of Asheville applied last year for another capital grant in the amount of \$110,000 for the purchase and installation of additional shelters and benches to be placed at specific locations along bus routes. These shelters and benches will add to the existing ones that have already shown to be a positive asset to the transit system. A

-6-

budget amendment is required to place this funding into the system. The City's CIP has outlined this project the past two years.

The Planning staff and the Asheville Transit Authority recommend that City Council adopt the proposed budget for the purchase and installation of the additional shelters and benches.

**ORDINANCE BOOK NO. 16 - PAGE 105**

Mayor Martin said that members of Council have been previously furnished with copies of the ordinances on the Ordinance Consent Agenda and they will not be read.

Councilman Skalski moved for the adoption of the Ordinance Consent Agenda. This motion was seconded by Councilman Hay.

On a roll call vote of 7-0, the Ordinance Consent Agenda passed on its first and only reading.

**III. PUBLIC HEARINGS:**

**A. PUBLIC HEARING RELATIVE TO SITE PLAN APPROVAL AND VARIANCE REQUEST FOR WINGATE INN LOCATED AT 2 KENILWORTH KNOLL**

Mayor Martin opened the public hearing at 5:07 p.m.

City Clerk Burlison presented the notice to the public setting the time and date of the public hearing.

Mr. Mike Matteson, Urban Planner, said that this proposal is for a four-story, 140 room Wingate Inn to be located at 2 Kenilworth Knoll.

The property totals approximately 6.75 acres and is zoned CH commercial highway. The property will be subdivided and a 1.4 acre outparcel will be created. This is considered a minor subdivision and has been approved by staff.

A variance is requested from the requirement that a parking lot buffer be placed between the Wingate Inn parking lot and an adjacent lot.

Staff has received no public comment regarding this project.

The Planning and Development staff recommends approval of the group development.

At their October 2, 1996, meeting the Planning and Zoning Commission voted unanimously to recommend approval of the group Development and the variance request. The recommendation regarding the variance was contingent upon the required number of trees being provided elsewhere on the site.

Mayor Martin closed the public hearing at 5:09 p.m.

Councilman Worley moved to approve the site plan and variance request for Wingate Inn. This motion was seconded by Vice-Mayor Field and carried unanimously.

**B. PUBLIC HEARING RELATIVE TO SITE PLAN APPROVAL AND ZONING VESTED RIGHTS ISSUE FOR BILTMORE HEALTH AND FITNESS PARK LOCATED ON U.S. HIGHWAY 25 AND I-40**

**-7-**

Mayor Martin opened the public hearing at 5:10 p.m.

City Clerk Burlison presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that this proposal is for a medical/office complex to be located off Hendersonville Road just south of I-40.

The 9.9 acres is zoned CH Commercial Highway and CS Commercial Service. The proposal consists of three buildings. Building A is a proposed two story medical office building and is 60,895 square feet. Building B is a proposed four story medical office building and is 94,986 square feet. Building C is a proposed three story wellness

center and is 40,000 square feet. This is a total of 195,881 square feet. Adjacent zoning is CH Commercial Highway to the South, I-40 right-of-way to the North, and the Town of Biltmore Forest to the West. The proposal meets all zoning and group development requirements.

The developer has requested vested zoning rights pursuant to Article 14, Section 30-14-1 of the City Code.

Staff has received no comments in opposition to the group development.

At their October 2, 1996, meeting the Planning and Zoning Commission voted unanimously to recommend approval of the group development with one condition: (1) letter of agreement regarding parking, drainage, and graded needed from Church.

Vice-Mayor Field was pleased that parking lots are being shared. She hoped the Planning Department would encourage that more in the future.

Mayor Martin closed the public hearing at 5:14 p.m.

Vice-Mayor Field moved to approve the site plan and granted the zoning vested right for Biltmore Health & Fitness Park. This motion was seconded by Councilman Sellers and carried unanimously.

#### **IV. UNFINISHED BUSINESS:**

##### **A. RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A NON-WARRANTY DEED TO DAWN H. LANTZIUS**

Mayor Martin said that this matter was originally brought before Council on August 13, 1996, and continued until September 24, 1996. The matter was then continued until this date to give the parties in the area time within which to see if the issue could be resolved.

Councilman Cloninger asked that he be excused from voting because his firm, of which he is a partner, represents Ms. Lantzius. Therefore, Councilman Worley moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Vice-Mayor Field and carried unanimously.

City Attorney Slawter said that the parties have again requested that this matter be postponed until November 26, 1996. He said the parties in the area who have an interest in this alleyway and courtyard have come to a tentative agreement and the paperwork has been drafted.

-8-

The conclusion is in the final stages to totally resolve this issue without the City of Asheville taking any role in it.

Vice-Mayor Field moved to continue this matter until November 26, 1996. This motion was seconded by Councilman Worley and carried unanimously.

##### **B. ORDINANCE NO. 2325 - ORDINANCE TO REZONE 9 LOTS IN THE BURTON STREET AREA FROM R-3 MEDIUM DENSITY RESIDENTIAL TO CS COMMERCIAL SERVICE DISTRICT**

Mayor Martin said that this public hearing was held on October 8, 1996, and tabled until this date.

Mr. Carl Ownbey, Urban Planner, reminded Council that the original petition was to rezone 15 lots from R-3 Medium Density Residential to CS Commercial Service. Two lots were recommended to be added by the Planning staff that were not part of the original petition so that there would not be an illegal spot zoning. Prior to the request being considered by the Commission, two property owners withdrew their request for the rezoning of their three lots on the west side of Burton Street (PIN Nos. 9639.14-44-3992 & 4927 and 9638.10-45-4022) leaving the rezoning request for a total of 14 lots. The Planning staff reviewed the rezoning request and recommended approval of just 11 of the lots and deny rezoning of three lots (PIN Nos. 9638.10-45-4124, 4228 and 5401). The 11 lots recommended for rezoning

are identified as PIN Nos. 9638.10-45-6027, 6187, 6285, 6365, 6477, 7033, 7038, 7356 and 7593 and 9638.10-44-6919 and 7928 and are all on the east side of Burton Street.

The subject properties are approximately 6.5 acres. The 17 lots are located on Burton Street just north of Haywood Road. The 17 lots contain eight residential structures, two commercial structures, six vacant lots, and two lots with commercial storage. The 2010 Plan recommended this area be low density residential with some commercial on the southern fringe. The subject properties are surrounded on the north and west by residential, on the east by I-240, and on the south by commercial. The existing commercial structure and the surrounding vacant lots on the east side of Burton Street have potential for commercial development. The lots on the west side of Burton Street, that are not vacant, have existing residential structures.

At the September 4, 1996, Planning & Zoning Commission meeting, the Commission voted 5-2 to recommend approval of the rezoning of the 11 lots on the east side of Burton Street.

Mr. Ownbey said that a valid protest petition has been filed.

Mayor Martin read a letter dated October 17, 1996, from Mr. Spiro Aliferis, 495 Haywood Road, Asheville, N.C.. The letter reads "In order to minimize the impact on the residential neighborhood from my proposed commercial rezoning, I request that the proposed zoning line be moved south as outlined: Beginning at a point, on the western property line of Tax Lot 6477, seventy (70) feet south of the southwest corner of Tax Lot 6567 and extending a line in an easterly direction to the northwest corner of Tax Lot 7356, then following the north property line of Tax Lot 7356 east to the right-of-way of I-240. This should give sufficient buffer to the residential neighborhood on Burton St."

-9-

Mr. Aliferis said that this revision to the rezoning request will result in an extra buffer to the residents and it will also nullify the protest petition.

Upon inquiry of Councilman Cloninger, Mr. Ownbey said that when Mr. Aliferis comes back for a small project review to develop his property, he will have to comply with additional buffering requirements.

When Vice-Mayor Field asked if Mrs. King's lot could be left out of the rezoning request since she did not want her property rezoned, Mr. Ownbey said that her lot (PIN No. 9638.10-44-6919) could be left out and it would not be spot zoning.

The following residents spoke in opposition to the rezoning request for various reasons, some which are: neighborhood does not want commercial encroachment into this residential area; the area in question is already an eye sore on Burton Street; neighborhood is trying to clean up the drug problems in the community and allowing commercial intrusion has the neighbors concerned; increase of commercial traffic; there are many children in the area who walk to and from the community center; it is unfair to have someone's property rezoned against their will; the City was mistaken to rezone this property commercial from the very beginning; commercial traffic should not be allowed on the residential Burton Street; the entire community should not be punished because one businessman made a mistake by spending \$40,000 to renovate his building when he knew his building was on residential property; the Burton Street community wants to remain residential; Mr. Aliferis does not live in the area and will not see the problems associated with commercial development in the evening hours; the area residents want housing in the community; the area already has a lot of junk cars; area residents are doing a lot of work to preserve and enhance their neighborhood and they do not want commercial encroachment; and the commercial development does not add to the fullness of the neighborhood to create the neighborhood/ commercial balance:

Ms. Gloria Johnson, 87 Burton Street and spokesperson for the Burton Street community

Mr. James Woody, area property owner

Ms. Teresa Daugherty, Secretary of the NAACP



Ms. Martha Wiggins, Burton Street resident

Mr. H.K. Edgerton, President of NAACP

Rev. Carl Arrington, 73 Taft Avenue and Pastor of the Wilson Chapel United Methodist Church located on Burton Street

Mr. Gennett, area resident

Mr. Tony Sayer, West Asheville resident

Mr. Earl Cobb, West Asheville resident

A resident of 16 Samayoa Road

Rev. Young, Pastor of St. Paul Baptist Church in West Asheville

Mr. Lawrence Peterson, West Asheville resident

Ms. Maggie Sims, Burton Street resident

Ms. Pauline Young

Mr. Linwood Crump, Shiloh resident

Ms. Gudger, West Asheville resident

Mayor Martin said that the property is already being used in a commercial fashion and has been for a long time.

Councilman Cloninger felt that the compromise Mr. Aliferis is suggesting would be preserving the current use of that property and would also expand the buffering protection for the neighborhood. He felt the compromise would not change the looks of the neighborhood.

-10-

In response to Councilman Sellers about what other uses are allowed in the R-3 district, Mr. Ownbey said that the R-3 zoning will allow 16 apartment units per acre and there is approximately three acres. Councilman Sellers felt that with apartments on that property, there would be an additional 25-40 cars a day compared to a warehouse where people would not be going there every day.

Upon inquiry of Mayor Martin, Mr. Ownbey said that with the compromise suggested by Mr. Aliferis, there would not be a valid protest petition.

Mr. Richard Nantelle, resident of West Asheville, suggested that Council might consider limiting the use of Burton Street to only residential traffic. Perhaps Burton Street (from Baker Street to Patton Avenue) could be designated as no truck traffic.

Councilman Sellers moved to instruct the City Manager to initiate a traffic study prohibiting trucks from traveling on Burton Street, from Baker Avenue to Patton Avenue. This motion was seconded by Councilman Worley and carried on a 6-1 vote, with Councilman Skalski voting "no".

Mr. Ownbey said that if City Council decided to proceed with Mr. Aliferis' compromise, the Planning Department would withdraw their recommendation to rezone PIN No. 9638.10-45-7593.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Sellers moved to rezone PIN Nos. 9638.10-45-6027, 6187, 6285, 6365, the southern portion of 6477 (as described in Mr. Aliferis' letter dated October 17, 1996), 7033, 7038, and 7356 and 9638.10-44-7928, and to deny rezoning of PIN Nos. 9638.10-44-6919 and 9638.10-45-7593, and the northern portion of PIN No. 9638.10-45-6477 for which Mr. Aliferis withdrew his request. This motion was seconded by Vice-Mayor Field.

On a roll call vote of 6-1 (with Councilman Skalski voting "no"), Ordinance No. 2325 passed on its first and final reading.

Mr. Aliferis read a statement "To the Honorable Russell Martin, Members of Asheville City Council and the citizens of Asheville, North Carolina. I regret that I must use this particular forum to address an issue relevant to the meeting today and possibly future meetings concerning this Council. As you know I have assumed at great expense, both in time and money, to bring about a positive and constructive change with this rezoning request, and I appreciate the passage. I have learned much about our community and the people that represent it. Unfortunately during this process, I have met a member of this City Council that is lacking in ethical principles. I was warned repeatedly not to associate myself with this person. This individual called me several times after the previous meeting to ensure me that this rezoning request was going to be his project for the next few weeks. Because he thought this was going to be good for all concerned. He was going to make sure that this would pass because he supported it. In one phone conversation he asked me to meet with him and the Burton Street neighborhood with the sole purpose to discuss this rezoning and voice our concerns. I agreed to attend, hoping this would resolve many of the questions and inaccurate answers that were running rampant at the time. The meeting was actually a sacrificial offering with me as the main menu. Instead of supporting my proposal, this Councilman used me to present himself as a champion for their rights. He started drilling me with constant negative comments, offered me no hope to resolve any differences, but on the contrary put me on the defensive immediately. I

-11-

never realized one person could be so purposely deceitful and manipulative. This meeting was a disaster. Not only did it not resolve issues, it contributed to ill feelings for all concerned. The entire episode has left me in total disbelief that this one individual is actually allowed to serve on this Council representing the City of Asheville, North Carolina. It seems that the fine people of Asheville have entrusted their faith and future in the wrong person. I was duped into believing this man. I'm sure the voters who entrusted him with their future will feel the same way. Lies, whether covered up with speeches of promises, are still lies. This statement is addressed specifically to you, Mr. Skalski. The position you hold is one of great responsibility. You are obviously aware of that. This position should be and has to be used for the benefit of the City as a whole and not just special interest groups which you tend to favor, simply because it means votes. Your allegiance to these groups is apparent. You told me you have 10,000 assured votes and asked me if I could give you the same. I obviously cannot match the stakes, but you can be assured that my vote will count for the future of this community and not to yourself glorifying election. Thankfully there are more than 10,000 people in Asheville. I ask you today to consider your constituents and let someone with integrity, honesty and moral ethics take your seat on this Council. I do not think that a person such as yourself should be in the policy-making position for the City of Asheville. To the remainder of the Council members, I believe you to be capable individuals that can make judgmental decisions given all the facts. With the exception of Mr. Skalski, I do respect the position you hold and will continue to do my best to be supportive."

## **ORDINANCE BOOK NO. 16 - PAGE 107**

### **V. NEW BUSINESS:**

#### **A. RESOLUTION NO. 96-189 - RESOLUTION ADOPTING THE RECOMMENDATION OF THE ASHEVILLE-BUNCOMBE WATER AUTHORITY AND AWARDDING THE BIDS FOR THE MILLS RIVER WATER TREATMENT FACILITY PROJECT**

Due to a conflict of interest in which Councilman Cloninger represents Hayes and Lunsford, Vice-Mayor Field moved to excuse Councilman Cloninger from voting. This motion was seconded by Councilman Sellers and carried unanimously.

Mr. Mike Holcombe, Director of Water Resources, said that the Asheville-Buncombe Water Authority ("ABWA") has awarded construction contracts for the Mills River Water Treatment plant and the connecting water transmission main, and is recommending that the City Council award them as well.

On Wednesday, September 11, 1996, the ABWA received bids for the Mills River Water Treatment Plant and its 24" Water Transmission Main. For the Water Treatment Plant, bids were received for a single prime contractor as well as bids for a general, electrical, HVAC and plumbing contractor. Unfortunately, the bid for the single prime contractor was slightly in excess of the bids for the individual components and the ABWA pursued the award of four individual contracts. In summary the low bids for these four components after negotiation are:

-12-

NEGOTIATED BID AMOUNT

GENERAL CONTRACTOR: METRIC CONSTRUCTION CO. \$ 17,027,054.00

ELECTRICAL CONTRACTOR: HAYES AND LUNSFORD 3,069,800.00

HVAC CONTRACTOR: PYATT HEATING & AIR CONDITIONING 817,924.00

PLUMBING CONTRACTOR: PRICE PLUMBING 723,270.00

WATER TREATMENT PLANT TOTAL BID PRICE \$ 21,638,048.00

Bids for the 24" Water Transmission Main were also received with the low bidder, after negotiation being:

COOPER CONSTRUCTION COMPANY: \$ 2,761,742.25

PROJECT LOW BID SUB-TOTAL \$ 24,399,790.25

A component of the 24" water transmission main is being installed by the NCDOT as a component of the Airport Road widening project. The estimated cost of this construction is \$700,000. Including this amount with the sub-total above results in a:

TOTAL NEGOTIATED LOW BID PROJECT CONSTRUCTION COST \$ 25,099,790.25

This project will be funded with \$33 million in Revenue Bonds that were sold in September 1996.

On Tuesday, October 15, 1996, the ABWA awarded these five construction contracts.

Staff as well as the ABWA were very comfortable with the modified construction contracts. The completed facility will still be one in which we can all take pride in having been involved in from its conception to its completion. Staff recommends favorable consideration of the resolution.

Mr. Holcombe thanked Mr. John Roberts, Mr. Bill Lapsley, the Asheville-Buncombe Water Authority, City Council and City staff for working so diligently in this endeavor.

Mr. Roberts then briefed the Council on the overall site, noting that the plant is scheduled to be on line in January, 1999. He then answered various questions from Council, one in which was the reason behind the construction of a 24" line rather than a 36" line.

Mayor Martin, on behalf of City Council, was pleased that construction of this facility will soon begin and thanked the community, in addition to the Water Authority, City Council and staff who all worked together to find the best possible water source.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 96-189. This motion was seconded by Councilman Skalski and carried unanimously.

### **RESOLUTION BOOK NO. 23 - PAGE 326**

**-13-**

#### **B. FINAL PLAT APPROVAL FOR DEVONSHIRE SUBDIVISION - PHASE IV**

Because his firm represents Beverly-Grant, Councilman Cloninger asked to be excused from voting due to a conflict of interest. Councilman Worley moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilman Sellers and carried unanimously.

Mr. Gerald Green, Senior Planner, said that Beverly-Grant Inc. is requesting approval of the final plat for Phase IV of Devonshire Subdivision located off Hendersonville Road south of the Blue Ridge Parkway.

Phase IV of Devonshire consists of 13 lots for single family homes on 3.83 acres. Access to the lots will be provided by Tiverton Lane, a new street constructed to City standards. The street will be dedicated to the City for ownership and maintenance. Devonshire will consist of 89 single family lots being developed in phases. Approval of the preliminary plat has been granted by the Planning & Zoning Commission. The developers are constructing homes on the lots and selling the home and lot as a package. The subdivision is zoned R-3 and the subdivision plat complies with all requirements of the City's subdivision regulations. The Public Works Department and the Legal Division have reviewed the plat and recommend approval of the plat.

The staff of the Planning & Development Department, the Public Works Department and the Legal Division recommend acceptance of the final plat of Phase IV of Devonshire.

Councilman Worley moved to approve the final plat of Devonshire Subdivision - Phase IV. This motion was seconded by Councilman Sellers and carried unanimously.

#### **C. FINAL PLAT APPROVAL FOR HUNTINGTON CHASE SUBDIVISION**

Mr. Carl Ownbey, Urban Planner, said that BWS Enterprises is proposing the development of 40.215 acres of land into a 36 lot residential subdivision in the Haw Creek community. The property is located on the west side of New Haw Creek Road north of the Trapper's Run Subdivision and adjacent to the City limits of Asheville. The developer proposes the construction of a new street to provide access to the lots. The street will be constructed to City standards and access will be from New Haw Creek Road. A letter of credit has been provided to the City to guarantee the construction of the road and other improvements.

The preliminary plat for this subdivision was reviewed and approved by the Planning & Zoning Commission at their February 7, 1996, meeting. The final plat and the letter of credit have been reviewed by the Legal staff, the Public Works staff and the Planning staff. The final plat is being presented for review and acceptance by City Council.

The Planning staff recommends that City Council accept the final plat for Huntington Chase Subdivision.

Councilman Seller moved to approve the final plat of Huntington Chase Subdivision. This motion was seconded by Councilman Cloninger and carried unanimously.

**-14-**

#### **D. MOTION APPROVING EXPENDITURE OF FUNDS FOR FIREWORKS FOR LIGHT UP YOUR HOLIDAYS PREMIERE CELEBRATION**

Ms. Debbie Ivester, Superintendent of Administration in the Parks & Recreation Department, said that Through a public/private venture, the Business District Coalition and the City of Asheville wish to propose a method of providing resources for the Light Up Your Holidays Premiere Celebration.

In July, the Business District Coalition agreed to support the production of the Light Up Your Holidays Celebration for the City of Asheville. The celebration includes many coordinated events during the holiday season, completion of a tabloid outlining activities and production of the Premiere Celebration. Sponsors to underwrite the costs of the events have been solicited but it has been difficult to secure a sponsor for the fireworks for the Premiere. Both the City of Asheville and the Business District Coalition feel strongly that the fireworks are a major portion of this event and are necessary in making the entire Light Up Your Holidays a success.

The Parks and Recreation Department budgeted \$9,500 for the Light Up Your Holidays Celebration which was to be used for lighting and electrical service. Because of the changes in how we will light the City/County Plaza which has been presented by Public Works, a total of between \$4,000 - \$5,000 is available for this purpose.

The Planning and Development Department and the Parks and Recreation Department recommend that the balance of funds from the lighting of the City/County Plaza be used for fireworks for the Light Up Your Holidays Premiere Celebration.

Vice-Mayor Field moved to authorize the balance of the funds from the lighting of the City/County Plaza to be used for the fireworks for the Light Up Your Holidays Premiere Celebration. This motion was seconded by Councilman Worley and carried unanimously.

#### VI. OTHER BUSINESS:

##### A. CITY OF WILSON

City Manager Westbrook presented Council with a letter of appreciation from Mr. Edward Wyatt, City Manager from the City of Wilson, expressing their appreciation during Hurricane Fran.

##### B. NETDAY

Councilman Skalski invited everyone to volunteer or donate to NETDAY on October 26, 1996, at an Asheville City School so that they can complete their wiring projects.

##### C. MUDSLIDES AT BALLANTREE AND PARK AVENUE

Mr. Richard Green read a letter dated October 15, 1996, from Richard H. Green, President, Coalition of South Asheville Neighborhoods to the Asheville City Council. The letter reads "At the last meeting of the Coalition of South Asheville Neighborhoods (CSAN) on October 8, 1996, the Steering Committee gave a report on the mudslides that have plagued Ballantree and Park Avenue. The mudslides are the result of irresponsible development of the hillside above Park Avenue (Phase II) by CBI (Ralph Kiger). The 150 coalition members present voted almost

-15-

unanimously to accept the recommendations of that committee. In response to those recommendations CSAN has been requested to write a letter to City Council asking that City Council take the following actions: (1) Launch a full scale investigation into the granting of vested development rights by the City of

Asheville in 1990. Jim Coman, Buncombe County Zoning Administrator, claims that neither Buncombe County nor Limestone Planning Council ever granted any of the necessary approvals that were needed for Asheville to vest said development rights (see attached letter from Jim Coman). Furthermore, Jim Coman has stated that he was never contacted by anyone at the City of Asheville to confirm that the alleged approvals had been granted by Buncombe County or Limestone Planning Council. The improper granting of non-existent rights was done solely to circumvent the Hillside Ordinance which would not allow the hillside to be clear cut as it presently has been done; (2) Ask the City Engineer's office why the above mentioned project is not in compliance with the Storm Water Ordinance. Only improper design or improper installation can explain the tremendous increase in storm water run off that is damaging property in Ballantree and Park Avenue. The intent of the Storm Water Ordinance is that post-development run off not exceed pre-development run off. It is evident that there is a serious problem; (3) Ask the Erosion Control office to monitor the project more closely. If the developer cannot contain sediment on his own property, Erosion Control should levy fines and shut the project down until the developer can contain his sediment (mud). In conclusion, City Council is asked to take the above mentioned actions on behalf of the residents of south Asheville. It appears that the City of Asheville took actions in 1990 for which there existed no legal basis. In addition, it appears that at least two different City Ordinances are being violated on a continuing basis by the above mentioned developer."

Mr. Green said that in addition to the above, and he has not been able to verify this, but he was also told by residents of Ballantree and Park Avenue that the developer is also in violation of State law which states that the direction of the runoff flow not be changed materially. Essentially, what they are saying is the percentage of the runoff that previously went to Ballantree has increased substantially. Much of the runoff that previously pre-development went to Park Avenue is now being diverted towards Ballantree. That is in violation of State law and they would also ask that City Council investigate this matter as well. He did ask that City Council indicate whether or not they will investigate the vested development rights matter.

Mayor Martin said that most of these issues were brought up at the Coalition of South Asheville Neighborhood's meeting and immediately after the meeting, City staff started their investigation. He assured Mr. Green that the City will be taking steps to ensure the developer will be in compliance in the future.

Councilman Cloninger suggested the City prepare a written response to Mr. Green after a thorough investigation. He also asked that Mr. Green put the alleged State violation concern in writing so that they may investigate that as well.

Councilman Hay suggested that this item be placed on an upcoming worksession.

Mr. Tony Lewis, City Engineer, updated Council on the stormwater incident at Park Avenue. He said that after a very high intensity storm the project did come out of compliance. Immediately after that, the developer and the project engineer were notified of the notice of violation and the City's representative in the erosion control office met on site with the engineer and developer of the project. They

-16-

immediately developed some additional measures to be placed on site. That included two sediment ponds to be installed upstream of the existing detention facility, which has been construction. Those measures are now in place.

Vice-Mayor Field asked Mr. Lewis various questions so that she could understand

what the process is in the construction phase when dealing with stormwater. She noted that she supported very much the stormwater ordinance and its implementation.

Mr. Lewis said that they have been in contact with the residents in the area as complaints come in. He said there have been 10 inspections of the site since it began in March of 1996. She said they continue to monitor and pay very close attention to the site.

Mr. Jim Hyde, resident on Park Avenue, reinforced the comments made by Mr. Green.

Councilman Hay felt that perhaps the City's ordinances needed to be strengthened so problems like this do not occur in the future.

Mayor Martin instructed the City Manager to continue the investigation of these concerns and schedule it on an upcoming worksession.

Ms. Phyllis Slagle, resident on Park Avenue, asked who would be responsible for the maintenance of the retention pond and drainage area. Mr. Lewis said that the owner is responsible for any maintenance. If a homeowners association is established, that association would then be responsible. Vice-Mayor Field also noted that the City's ordinance requires that City staff review the detention facility on an annual basis and there is a fee that the City charges for that inspection.

Ms. Carol Hyde, resident in the Pinnacle, urged Council to protect them and others from these type violations.

Ms. Kathy Collins, resident in Ballantree, said that she has left a video tape of the mudslides and urged all Council members to review the tape.

#### D. CLAIMS

The following claims were received by the City of Asheville during the week of October 4-10, 1996: Charles Saunders (Water), Steven Markarian (Water), Haig Rudd (Water), Joseph Crain (Water) and Jean DuMont (Water).

The following claims were received during the week of October 11-17, 1996: Rev. James W. Hills (Police) and Eugene Auchter (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

#### VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 7:05 p.m.

---

CITY CLERK MAYOR

---